

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

APPLE MACPRO COMPUTER, et al.

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Case No. 15-mj-850

MOTION TO VACATE ORDER OF CONTEMPT

Francis Rawls, by and through counsel, hereby moves to vacate the order of contempt issued on September 30, 2015, as supplemented October 5, 2015, on the ground that compliance with the order would deprive him of the fundamental constitutional right not to be compelled to be a witness against himself. In support, it is represented as follows:

1. These proceedings arise from Mr. Rawls's assertion of his Fifth Amendment right against self-incrimination in response to a demand that he recall and divulge computer passwords for investigators' use in deciphering encrypted content on devices seized from Mr. Rawls's home on March 30, 2015.

2. By order of August 27, 2015, the Honorable Thomas J. Rueter held that the Fifth Amendment did not protect Mr. Rawls from being forced to disclose the passwords. Mr. Rawls thereafter appeared at the Delaware County Office of the District Attorney, where the previously seized devices had been secured, and entered passwords into a forensic interface set up by investigators. The passwords did not work.

3. Based on a finding that Mr. Rawls was able to recall the passwords, the Court thereafter held him in contempt on September 30, 2015.

4. Mr. Rawls noticed an appeal. In the Third Circuit, he contended that a suspect may not be required to recall and divulge a computer password because the Fifth Amendment

right against self-incrimination prohibits compelling a person to communicate the content of his own mind in aid of a criminal investigation of his conduct.

5. Reviewing for plain error only, the Third Circuit rejected Mr. Rawls's Fifth Amendment challenge and affirmed the order of contempt. *See United States v. Apple Mac Pro Computer*, 851 F.3d 238 (2017). Mr. Rawls's petition for rehearing was denied on July 28, 2017.

6. By separate motion filed this day, Mr. Rawls seeks to be released from custody on the ground that he has already been imprisoned for a period that exceeds the 18-month statutory maximum under 28 U.S.C. § 1826(a) for failure to comply with an order to testify or provide other information in federal judicial proceedings. *See Mot. for Stay of Contempt Order and Release from Custody*.

7. As detailed in the accompanying memorandum of law, it remains Mr. Rawls's intention to seek Supreme Court review of the Third Circuit's decision rejecting his Fifth Amendment challenge. In the event the Supreme Court grants review and ultimately upholds Mr. Rawls's claim of privilege, he will be entitled to have the contempt order vacated. *See In re Grand Jury Proceedings (Schofield I)*, 486 F.2d 85, 91, 94 (3d Cir. 1973). Such relief will help restore his otherwise unblemished record of service over 17 years as a Philadelphia police officer and sergeant.

8. So as not to deprive Mr. Rawls of opportunity to seek further appellate review of the vital Fifth Amendment issue he has raised, this motion to vacate should be held in suspense pending the outcome of proceedings in the Supreme Court.

WHEREFORE, Francis Rawls, by and through counsel, respectfully requests that the order of contempt be vacated at such time as his claim of privilege may be upheld in proceedings on certiorari or on remand therefrom.

Respectfully submitted,

/s/ Keith M. Donoghue

KEITH M. DONOGHUE
Assistant Federal Defender

BRETT G. SWEITZER
Assistant Federal Defender
Chief of Appeals

LEIGH M. SKIPPER
Chief Federal Defender

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ORDER

AND NOW, this ____ day of _____, 20__, upon consideration of Francis Rawls's *Motion to Vacate Order of Contempt*, the memorandum of law in support, the government's response thereto, if any, and the proceedings before this Court on August 31, 2017, it is hereby **ORDERED** that the order of civil contempt issued on September 30, 2015 (Doc. No. 20), as supplemented on October 5, 2015 (Doc. No. 21), is **VACATED**.

BY THE COURT:

HONORABLE CYNTHIA M. RUFE
United States District Court Judge

CERTIFICATE OF SERVICE

I, Keith M. Donoghue, Assistant Federal Defender, Federal Community Defender Office for the Eastern District of Pennsylvania, hereby certify that I have electronically filed this *Motion to Vacate Order of Contempt* and served a copy upon Filing User Michelle Rotella, Esq., through the Third Circuit Court of Appeals' Electronic Case Filing (CM/ECF) system.

/s/ Keith M. Donoghue
KEITH M. DONOGHUE
Assistant Federal Defender

DATE: August 28, 2017